

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1013 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

PATEL RATNABHAI AMBERAM

SINCE DECEASED BY HIS HEIRS

Versus

RAJPUT MADARJI HIRAJI

Appearance:

MR Ashis Majkudar for Mr. RC JANI for Petitioner

MR AMIT C NANAVATI for Respondent No. 1

CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 13/04/98

ORAL JUDGEMENT

The petitioners before me claim to be the tenants in respect of a parcel of land admeasuring about 35 acres out of the land bearing S.No. 392 admeasuring 1 acre and 31 gunthas situated at village Dasaj, Taluka Sidhpur, District Mehsana. The petitioners have lost their case through out. The Gujarat Revenue Tribunal was not able to countenance the case of the petitioners and

ultimately, the petitioners are before me challenging the orders pronounced by the Gujarat Revenue Tribunal under which the orders of the authorities below came to be confirmed.

2. The facts are not much in dispute. The land bearing S.No. 392 situated at village Dasaj under Sidhpur taluka of Mehsana District came to be mortgaged with deceased Ratnabhai Ambaram Patel under a deed of mortgage dated June 23, 1952. Later on this mortgage came to be redeemed on May 12, 1955. On the very same day i.e. May 12, 1955, an area admeasuring 1 acre and 31 gunthas came to be purchased by the deceased Ratnabhai Ambaram Patel under the sale deed. Any how, a small piece of land of the same survey number admeasuring about 35 gunthas had remained. It is the case of the petitioners that the deceased Ratnabhai Ambaram Patel was the tenant qua this parcel of land. This case has not been accepted by Mamlatdar & Agriculture Lands Tribunal, the Assistant Collector and ultimately by the Gujarat Revenue Tribunal. The decision of the Gujarat Revenue Tribunal dated November 8, 1985 is under challenge in this petition.

3. Learned counsel Mr. Majmudar who appears on behalf of the petitioners raises, a three fold contention. The first contention coming from the learned counsel for the petitioners is that on merits the petitioners have got a very good case and that the authorities below should have accepted their case that the deceased Ratnabhai Ambaram Patel was a tenant qua a parcel of land admeasuring about 35 gunthas. So far as this contention coming from learned counsel Mr. Majmudar for the petitioners is concerned, it requires to be appreciated that not only the Mamlatdar & Agriculture Lands Tribunal and Assistant Collector who was hearing the appeal but ultimately the Gujarat Revenue Tribunal have come to the conclusion that the said case could not be established by the petitioners. It is indeed true that Village Forms No.7-7A and 12 had shown the name of Ratnabhai Ambaram Patel as a person in possession but any how there is no corresponding entry showing the name of deceased Ratnabhai Ambaram Patel as the tenant of the land. Moreover, admittedly, the mode of cultivation shown in the revenue records is mode no.1 which would signify that the occupant was cultivator of the land. It is an admitted position that at no point of time, Ratnabhai Ambalal Patel had paid land revenue. Some witnesses had tried to support the case of the petitioners by saying that Ratnabhai Ambaram Patel was the tenant. But any how, in absence of any other

material particulars supporting the say of the deceased, a views has been taken consistently that Ratnabhai Ambaram Patel was not be the tenant of the land. On merits therefore, it appears that there is no reason for me to interfere with the consistent orders of the courts below.

4. Learned counsel Mr. Majmudar for the petitioners urges that the first appellate orders would go to show that the matter came to be remanded to the Agriculture Land Tribunal with a specific direction to have a map prepared with the panchnama so that ultimately the parcel of the land could be located. It was the endeavour on the part of learned counsel Mr. Majmudar to urge before me that possibly no such map or panchnama has been prepared. But the orders pronounced by the appellate authority and the Gujarat Tribunal would go to show that in fact such a map was prepared. Learned counsel Mr. Majmudar for the petitioners urges that ultimately the remanded proceedings do not show the consideration of this literature. It is difficult to agree with the contention coming from learned counsel Mr. Majmudar for the petitioners in this respect. The entire case of the parties has been examined in the remanded proceedings and that ultimately the say has been approved by the Appellate Court and the revisional authority. Therefore, it could not be urged that during the remanded proceedings certain directions were not followed or that the scope of the inquiry was enlarged by the learned Agriculture Land Tribunal.

5. The last contention coming from learned counsel Mr. Majmudar is that reasonable opportunity of being heard was not given to the petitioners when the appeal came to be heard and decided by the Assistant Collector at Patan. Learned counsel Mr. Majmudar for the petitioners urges that the notices of hearing were sent to the petitioners and to the learned counsel for the petitioners who used to represent their cause and who at all material times was staying at a small place like Sidhpur. The orders of the Tribunal would go to show that so far as the notices issued on the address of the learned advocate for the petitioners is concerned, there has been an endorsement " unclaimed, not found". According to learned counsel Mr. Majmudar for the petitioners notice, was taken out simultaneously on the petitioners and their learned advocate and a known lawyer residing at a small place like Sidhpur could have been easily located and a lawyer who used to represent the cases of various parties before the Assistant Collector in Tenancy Appeals would not refuse the notice of

hearing. But the fact remains that notices also came to be simultaneously issued on the petitioners. These notices were refused by the petitioners. This would therefore, go to show that there was valid service so far as the petitioners are concerned. It therefore appears that the Gujarat Revenue Tribunal was justified in coming to the conclusion that it cannot be said that reasonable opportunity of being heard was not given to the petitioners. Thus all the contentions raised by learned counsel Mr. Majmudar for the petitioners fail and therefore, the petition also fails and the same requires to be dismissed. I order accordingly. Rule shall stand discharged. Ad-interim relief shall stand vacated. No costs.

(S.D.Dave.J)